BEARD OIL CO.

IBLA 89-654 Decided November 27, 1990

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer TX NM 60927.

Affirmed.

1. Administrative Authority: Estoppel--Administrative Authority: Laches--Oil and Gas Leases: First-Qualified Applicant--Rules of Practice: Appeals: Standing to Appeal

   Because of the Department's obligation to lease to the first-qualified applicant, issuance of a lease pursuant to a noncompetitive future interest oil and gas lease offer for acquired lands does not preclude a junior offeror from challenging issuance of the lease on appeal from BLM's rejection of the junior offer for the reason that the lands requested were leased to a senior offeror. The junior offeror has standing to appeal for, if the lease is cancelled, the junior offer must be processed. The right to challenge issuance of the lease and the Department's authority to cancel an improperly issued lease were not lost through estoppel or laches where the junior offeror was not notified of lease issuance nor allowed to be heard until the decision rejecting its offer.

2. Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Applications: Description--Oil and Gas Leases: Description of Land

   In accordance with 43 CFR 3111.2-2(b) and (c) (1983), a noncompetitive future interest oil and gas lease offer may properly describe requested lands by the tract acquisition number assigned by the acquiring agency where the lands have not been surveyed under the rectangular survey system. Because a specific offer form was not required for noncompetitive future interest oil and gas lease offers submitted in 1983, the offer may include several descriptions of requested lands. An offer to lease which describes the lands sought by the tract acquisition number followed by a description taken from the acquiring deed is sufficient, even though the description contains a typographical error, provided BLM can identify the lands sought within the documents which constitute the offer.

APPEARANCES: John R. Brown, Vice President - Land, Beard Oil Company; Michael J. Manning, Esq., Washington, D.C., Uriel E. Dutton, Esq., and William B. White, Esq., Houston, Texas, Ernest C. Baynard III, Esq.,
and John L. Gallinger, Esq., Washington, D.C., for Foster Minerals, Ltd.; Gayle E. Manges, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Beard Oil Company has appealed from a July 21, 1989, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting noncompetitive oil and gas lease offer TX NM 60927 because the lands described are within oil and gas lease TX NM 58182.

On January 2, 1985, Beard Oil filed an oil and gas lease offer for 5,497 acres of acquired lands which it described in the offer as "U.S.F.S. Tract Number J-2-III." The record shows that the minerals in this tract became available for leasing on January 1, 1985, on vesting of the mineral interest in the United States pursuant to a deed from Foster Lumber Company, dated December 21, 1935. While the 1935 deed conveyed the surface estate to the United States, it reserved the mineral estate to the grantor (succeeded in interest by Foster Minerals, Ltd.) for a period ending January 1, 1985 (except in the event of commercial operations or production in paying quantities not here relevant). Prior to Beard Oil's offer, Foster Minerals filed a future oil and gas interest lease offer on December 16, 1983, under the authority of Departmental regulations 43 CFR 3110.9 (1983). Pursuant
to this offer, oil and gas lease TX NM 58182 for 5,497 acres, identified
as "Tract J2-III" of the Sam Houston National Forest (San Jacinto County, Texas), was issued effective May 1, 1987. Thereafter, on July 21, 1989, BLM rejected Beard Oil's offer, designated TX NM 60927, because the lands identified were already under lease to Foster Minerals.

In its statement of reasons (SOR), Beard Oil argues that the lease was improperly issued to Foster Minerals. 1/ The primary contention made is that Foster Minerals' offer to lease improperly described the lands sought and later leased because one of the calls in the course and distance description differed from the deed description. Beard Oil avers that the description does not close and describes less than all of Tract J2-III. In later filings, Beard Oil argues that the instant situation is governed by the Board's decision in Henry P. Ellsworth, 97 IBLA 74 (1987), and that BLM's position here is contrary to the holding in Ellsworth. In addition, Beard Oil argues that the certificate of title furnished by Foster Minerals in accordance with 43 CFR 3111.3-2 (1983) was defective inasmuch as it was prepared and certified by a title company. 2/

1/ Beard Oil mistakenly refers to the issued lease in conflict with its offer as "58202" in its statement of reasons.
2/ Departmental regulation, 43 CFR 3111.3-2 (1983), required that future interest offers be
"accompanied by a certified abstract of title containing record evidence of the creation of, and offeror's right to, the claimed mineral interest. If the offeror acquired the operating rights under a lease or contract, the offer shall also be accompanied by a copy of such lease or

In response, Foster Minerals argues that Beard Oil's challenge is without merit and is barred by laches and estoppel. Foster Minerals also contends that Beard Oil lacks standing because its offer is affected by a later-enacted statute requiring Federal lands to be offered competitively in the event a lease is cancelled. Responding to these competing claims, BLM has declared in its answer that it was able to determine the lands applied for lease, by examination of the lease offer made by Foster Minerals.

We initially review Foster Minerals' assertions that Beard Oil lacks standing and that it cannot collaterally challenge the decision to issue the lease.

[1] The Mineral Leasing Act for Acquired Lands provides that acquired lands available for leasing "may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws." 30 U.S.C. § 352 (1988). The Mineral Leasing Act of 1920 provides that if the Secretary decides to lease a parcel of Federal land, he must issue the lease to the first-qualified applicant. 30 U.S.C. § 226(c) (1988); see McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955). It is
well established that an incomplete application does not qualify an applicant to receive a lease if third-party rights are outstanding. Gerald L. Christensen, 30 IBLA 303 (1977). Thus, it is mandatory, under the statute, that a lease issued to an applicant not otherwise qualified be cancelled and a lease be issued to the first-qualified applicant, as was explained by the Board in Arthur E. Meinhart, 6 IBLA 39, 42 (1972):

> Where an oil and gas lease was issued pursuant to an offer which did not describe the land correctly as required by the regulations, and a subsequent offer to lease, correctly describing the land in conflict, was pending when the lease issued, the
> lease must be canceled so that the junior offeror's statutory preference right to a lease may be satisfied. F. W. C. Boesche, A-27997 (August 5, 1959), aff'd Boesche v. Udall, 373 U.S. 472 (1963).

Meinhart was remanded to BLM for cancellation of the lease and review of the junior offer with respect to issuance of a lease notwithstanding Departmental regulations found at 43 CFR Subpart 3112 (1972), which required lands
in a cancelled lease to be offered through the simultaneous offer process.

fn. 2 (continued)
contract. In lieu of an abstract, a certification of title may be furnished provided that the State in which the lands are located authorizes abstracting and title companies to certify as to title to lands." The
Texas authorities furnished by Beard Oil to support the argument that the certificate was inadequate do not appear to preclude issuance of a certificate of title by a title company for the purposes stated in the regulations. Furthermore, Foster Minerals' subsequent technical correction of the certificate of title submitted with its offer was not a revision of the offer. Because the offer as originally filed was not subject to rejection for reasons discussed in the text of this opinion, an amendment to a document such as the certificate of title could not alter the priority of the original lease offer. See Bruce Anderson, 101 IBLA 366 (1988).

See also Emery Energy, 90 IBLA 70, 76 (1985). In Gerald L. Christensen, 30 IBLA at 305, BLM dismissed a junior offeror's assertion that it had standing to protest a defective senior offer, and announced that BLM would post the lands on a future simultaneous listing after cancellation of the lease became final. The Board set aside BLM's decision, stating that such action was "without substance" in light of the statutory mandate that the lease be issued to the first-qualified applicant. 30 IBLA at 307.

Relying on the Federal Onshore Oil and Gas Leasing Reform Act of 1987, see 30 U.S.C. § 181 (1988), Foster Minerals argues that enactment of this legislation annuls Beard Oil's interest in its offer. The grandfather clause in section 5106(a) of the Reform Act, 30 U.S.C. § 226 note (1988), allows lease offers pending on December 22, 1987, to be processed under earlier laws, except where the issuance of the lease would be unlawful
under those prior laws. Foster Minerals asserts that the effect of issuance of lease TX NM 58182 was to withdraw the lands from further noncompetitive leasing until they can be offered competitively under the Reform Act, citing 43 CFR 3120.1-1 which provides, pertinently, that "lands available for leasing shall be offered for competitive bidding under this subpart, including * * *: (a) lands in oil and gas leases that have terminated, expired, been cancelled or relinquished."

This argument is without merit, as Beard Oil's lease offer was not "effectively denied" prior to the enactment of the Reform Act by issuance
of the lease. Therefore, we must consider the junior offeror's argument that the lease to Foster Minerals was not issued to the first-qualified applicant.

Foster Minerals' contention that the appeal is barred through the principles of estoppel or laches rests on the proposition that the Foster Minerals lease was issued without challenge, despite Beard Oil's knowledge of the lease offer and its contents at that time. It is true that a prior decision of the Department generally will not be overturned by this Board where a party has failed to appeal such decision "and in essence acquiesced to the decision for a prolonged period of time." Ida Mae Comer, 73 IBLA
97, 99 (1983). In the absence of compelling legal or equitable reasons for reconsideration, the doctrine of administrative finality--the administrative counterpart of res judicata--will bar consideration of an agency decision in later proceedings after a party has been given an opportunity for Departmental review and did not seek review, or appealed and the decision was affirmed. Helit v. United States, 113 IBLA 299, 97 I.D. 109 (1990); United States v. Jones, 106 IBLA 230, 246, 95 I.D. 314, 323 (1988). However, this principle is applicable to only those parties actually involved in the earlier proceedings and to their privies, and it arises only where the later proceedings involve the same lease, the same parties, and the same issues. See United States v. Johnson, 39 IBLA 337 (1979). Thus, the principle of administrative finality can operate only if the parties had prior adequate opportunity to challenge or defend their interests before the Department.

There are several flaws in Foster Minerals' motion to now bar Beard Oil from challenging the lease. First, the case file in TX NM 58182 does not include a decision issuing the lease to Foster Minerals which named

Beard Oil as an "adverse party," thereby providing Beard Oil with an opportunity to participate at the time of issuance. As there is nothing to demonstrate Beard Oil was a party to the first proceeding, administrative finality will not bar this appeal. Second, there is no evidence that Beard Oil was notified it could challenge issuance of the lease to Foster Minerals, until the July 27, 1989, decision appealed from. Foster Minerals insists that Beard Oil acquiesced in the issuance of the lease by waiting
so long before challenging Foster Minerals' offer. It was not Beard Oil's fault that it was not named as an adverse party to a decision issuing the lease, or that BLM waited over 2 years after the issuance of the lease before rejecting Beard Oil's offer, and it should not be made to suffer
the consequences of delays it did not cause.

Concerning estoppel arguments raised by Foster Minerals, there is nothing in Beard Oil's conduct on which Foster Minerals could rely so as to provide a foundation for estoppel. Without opportunity to be heard, Beard Oil's failure to protest Foster Minerals' offer or challenge issuance of
the lease did not constitute implicit acceptance of issuance of a lease
to Foster Minerals. Here, BLM was under a statutory obligation to ensure that a lease, if granted, should issue to the first-qualified applicant.
In Boesche v. Udall, 373 U.S. 472 (1963), the Supreme Court reviewed the administrative cancellation of leases improperly issued and explained:

> In the day-to-day operation of the Bureau of Land Management, the managers of the local land offices act on each lease application in chronological sequence. If the land is available, if the applicant is qualified, and if the application appears to conform to the regulations, a lease will issue. In due course the manager will come to conflicting applications for the same land. If a later application is not the first qualified, his application will be denied. The notice of denial will probably afford the first occasion for an applicant to investigate whether he was in truth the first qualified applicant, and to appeal on this ground to the Director of the Bureau of Land Management and the Secretary of the Interior. Thus, given the nature of the land office's business, the power of cancellation, at least while conflicting applications are pending, is essential to secure the rights of competing applicants. 14/
>
> We sanction no broader rule than is called for by the exigencies of the general situation and the circumstances of this particular case. We hold only that the Secretary has the power to correct administrative errors of the sort involved here by cancellation of leases in proceedings timely instituted by competing applicants for the same land.
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> In so holding we do not open the door to administrative abuses. The regulations of the Department of the Interior provide for adversary proceedings on appeals taken within the Department where other private parties will be affected by the decision. * * * Appeal is of right * * *, the appellant is required to notify his opponent * * * and the latter has full rights of participation.

> 14/ Petitioner contends that if an administrative cancellation proceeding is permitted to the Secretary, it would be imprudent for a lessee, since his interest would thus be precarious, to assume financial risk of developing his lease, and therefore the effective term of his lease would be curtailed even if he were finally held to be the first qualified applicant. But the same delay--and perhaps even a longer one--would result if the Secretary were remitted to judicial proceedings for cancellation. [Citations omitted.]

Id. at 485-86. Thus, in consideration of the Department's statutory obligation to issue a lease to the first-qualified applicant, it is not improper for the Board to consider Beard Oil's appeal of the decision rejecting its lease offer.

The land in issue is identified as Tract J2-III of the Sam Houston National Forest. Foster Minerals' offer is captioned "OFFER TO LEASE
FOR OIL AND GAS FUTURE INTEREST MINERAL RIGHTS ACQUIRED LANDS - 5,497.00 ACRES DESCRIBED IN EXHIBIT A, SAN JACINTO, TEXAS (Foster Minerals, Ltd. Application No. 5)" and begins: "Foster Minerals, Ltd. hereby offers to lease the parcel of land, described in Exhibit A attached hereto and made
a part hereof pursuant to and subject to the terms and provisions of the
Act of August 7, 1947 * * *." The offer is in the form of a three-page cover letter with numerous succeeding pages labeled "Exhibits A through F." Exhibit A consists of a course and distance description of the parcel. Exhibit B is a copy of the deed from Foster Lumber to the United States, "having been shortened to include only such portion of the original total land description as is needed to cover the parcel of land for which this offer or application is being made." Exhibit C is a certificate of title "covering all the lands of Foster Minerals, Ltd., in San Jacinto County, Texas, including the parcel described in Exhibit A." A U.S. Forest Service map "representing the parcel covered by this offer or application, shown in red" constitutes Exhibit D. The remaining Exhibits E and F involve Foster Minerals' status as a limited partnership.

The nub of the appeal is Beard Oil's assertion that Exhibit A does not properly designate the parcel sought as Tract J2-III. 3/ We reject this assertion. The first page of attachments to Foster Minerals' offer letter reads: "5,497.00 acres of Tract J2-III, as described by metes and bounds in Exhibit A attached." The next page is captioned "TRACT (J2-III), SAN

3/ We note that the impact of our decision here may well be limited to this case in light of the relatively few "grandfathered" future interest lease offers which have not been adjudicated and also considering that all other lease offers are to be made on only approved forms, including noncompetitive future interest offers, under the current regulations at 43 CFR 3110.9. Further, the Reform Act of 1987, precludes such noncompetitive offers until after an identified future interest has been offered competitively by BLM, thereby producing a standard description to be used in any subsequent noncompetitive offer.

JACINTO COUNTY, TEXAS." The following course and distance description mirrors the description found in the deed to the United States attached as Exhibit B except in the matter of the 10th call, which reads, in Exhibit A, as follows: "Thence N. 21° 0' E., continuing with the lands of E. D. Tidwell * * * 18.10 chains to corner 10, on the south line of the Vital Flores Survey, a stake witnessed by an old marked bearing tree." The only mistake made here is that the description for Tract J2-III should read "Thence N. 21° 0' W."

BLM concluded that the offer was for Tract J2-III with good reason. Exhibit A announces the parcel sought is Tract J2-III, consisting of 5,497.00 acres. Exhibit B, the deed description for the subject parcel, is faithfully followed in Exhibit A, but for the erroneous direction provided in the 10th call. Exhibit B also indicates that the tract's net acreage is 5,497.00 acres. The area delineated on the map (Exhibit D) is Tract J2-III, no more no less, and its total acreage could readily be determined.

[2] Appellant contends that the description of the offer "on its face" is ambiguous and therefore insufficient, relying on the Board's decision in Ellsworth, supra. The offeror in Ellsworth, 97 IBLA at 75, filed an oil and gas lease offer for acquired lands in Nueces County, Texas, depicting lands sought by providing a description from the acquiring document, followed by a second, more detailed, course and distance description. BLM rejected the offer because the description of land by courses and distances failed to include the course and distance for the final call and some of the courses and corner designations did not follow proper direction. Id. at 74. The Board affirmed BLM's decision, declaring an ambiguity was created by the second description and the Department had no authority to interpret or correct it. Id. at 75-76.

At the time of Foster Minerals' offer, the adequacy of an acquired lands description was controlled by Departmental regulation at 43 CFR 3111.2-2 (1983). The purpose of Departmental regulation of descriptions in offers is to require the offeror to give a description sufficient on its face to delimit the lands in the offer. See Bernard Silver, 107 IBLA 68, 69 (1989), and cases cited. The lands at issue here are located in Texas where the rectangular system of public land surveys does not apply. See U.S. Dept. of the Interior, BLM, Manual of Surveying Instructions, 1-23 (1973 ed.); Bernard Silver, 107 IBLA at 69. Departmental regulations provide alternative methods for describing acquired lands not surveyed under the public land survey system: the lands could be described as in the deed or other document by which the United States acquired title or, where the acquiring agency had assigned a tract number to the land sought, could be described by such tract identification number. 43 CFR 3111.2-2(b) and (c) (1983).

All parties agree that Foster Minerals supplied the proper tract acquisition number in the offer. The Board has held that where an offeror has provided the proper tract acquisition number, the offer satisfies the requirements of 43 CFR 3111.2-2(c) (1983), and the offeror does not need to comply with the requirements of 43 CFR 3111.2-2(b) (1983). See, e.g., Bernard Silver, 107 IBLA at 69; Leon F. Scully, Jr., 79 IBLA 117 (1984). Nevertheless, Foster Minerals further elaborated the description of the land by supplying the description found in the acquiring deed. Where an

additional description is correct and creates no ambiguity, the description is viewed as surplusage and will not affect the description by tract number. Bernard Silver, 107 IBLA at 70. Beard Oil argues, incorrectly in this case, that the addition of a course and distance description in the instant case modifies the description by tract number because the course and distance description is incorrect and creates an ambiguity.

In Ellsworth, we held that the description in the offer was ambiguous because a course and distance description is not necessary unless the offeror desires less than the entire tract acquired by the United States, and the course and distance description provided was not equivalent in description to the tract number description because of errors in the description. 97 IBLA at 76. The Board reasoned: "By including a description by course and distance to more particularly describe the land sought which was not compatible with the actual description of the land acquired by the [declaration of taking], appellant created an ambiguity in his offer." Id. Foster Minerals, however, did not supply a course and distance description to "more particularly describe the land sought." Rather, it furnished both the description found in the acquiring document and the tract number. The purpose of the regulation (to delimit the land sought) is not offended by what Foster Minerals has done here.

The issue to be resolved is the effect of the error in the tenth course and distance description, and whether it creates a material ambiguity in the offer. The Board has held that where BLM must go outside the offer form in order to determine exactly what land was embraced in the offer, an offer should be rejected as insufficient. See Leon Jeffcoat, 66 IBLA 80 (1982). In Foster Minerals' situation, "the face of the offer" would be construed differently from "the face of the offer" reviewed in Ellsworth because a noncompetitive oil and gas lease offer was required to be submitted on a standard form approved by the Director, BLM. 43 CFR 3111.1-1 (1983). In the standard form, a space is provided for the "legal description of land requested." It is the source to which BLM looks to "delimit" the lands of the offer. If the description supplied does not accurately describe the lands sought, a lease could not, therefore, be issued unless either BLM interpreted the intent of the offeror through other sources, or the offeror demonstrated with supplemental filings which lands were to be embraced by the offer. The Board has held, in such circumstances, that BLM has no authority to render interpretations or consider corrections because it would involve going outside the form itself to determine exactly which lands were sought. Ellsworth, 97 IBLA at 76; James M. Chudnow, 70 IBLA 71 (1983). Such an offer is therefore insufficient. Id.

In contrast, for noncompetitive future interest lease offers, there was no mandatory form in 1983; all that was necessary was that the offer include information required by 43 CFR 3111.3-2 (1983). See 43 CFR 3111.3-1, 3-2 (1983); BLM Manual, 3111.32.A. Foster Minerals' offer consisted of the cover letter with "exhibits" in which the land sought was identified by tract number and by the course and distance description of the conveying document. The intent of the offeror was conveyed by the sum of those documents comprising the offer, and BLM was not compelled to "look outside" the offer to delimit the boundaries of the land sought. The effect

of the error in Exhibit "A" was not fatal to the offer, as no ambiguity was created which could not be resolved within the "face of the offer itself" by reference to the tract number and the map description. See Beard Oil Co., 88 IBLA 268 (1985). Accordingly, BLM properly issued the lease to Foster Minerals pursuant to the offer received.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

David L. Hughes
Administrative Judge